

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

IAN M.,

Petitioner,

v.

NORTH BAY REGIONAL CENTER,

Respondent.

OAH No. 20120501021

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on June 6, 2012, in Napa, California.

Petitioner was present and was represented by his mother. Petitioner's father was also present at hearing.

Nancy Ryan, Attorney at Law, represented the North Bay Regional Center.

The matter was submitted for decision on June 6, 2012.

ISSUES

1. Is the assessment of the annual participation fee unconstitutional?
2. May the regional center assess an annual program fee on petitioner's family?

FACTUAL FINDINGS

1. Petitioner is a 34-month-old boy who lives at home with his parents. He receives speech therapy services through the North Bay Regional Center (NBRC), pursuant

to the Early Intervention Services Act (Act). Petitioner does not receive services through the Medi-Cal program.

2. Effective July 1, 2011, regional centers are required to assess an annual family program fee on families receiving services pursuant to the Act who meet specific criteria.¹ The amount of the fee is based upon the family's size and annual income, and is determined by a schedule developed by the Department of Developmental Services (DDS).

3. NBRC reviewed the files of its clients and sent letters to those families that appeared to meet the fee requirement criteria. The letters invited the families to provide evidence that they did not fall within the provisions of the program because of their annual income or any of the other disqualifying factors.

4. In April 2012, when petitioner's parents received a letter from NBRC assessing the fee, they were shocked. They felt that the assessment of the fee was unconstitutional and not in keeping with the spirit of the Individuals with Disabilities Education Act.² As a result, they did not submit evidence of family income to the regional center, but requested a hearing.

5. At hearing, petitioner's parents agreed to submit evidence of the family income to NBRC. Upon review of the family's financial information and the DDS annual fee schedule at hearing, NBRC determined that no fee pursuant to Welfare and Institutions Code section 4785 should be assessed.

LEGAL CONCLUSIONS

1. "Early Start" is the name used in California to refer to a federal program to provide services for infants and toddlers (up to 36 months of age) at risk for certain disabilities. California implements the program through the Act.³ This law provides that DDS is responsible for administering the Early Start program.⁴ It further provides that direct services to infants and toddlers shall be provided through the regional center system that was established under the Lanterman Developmental Disabilities Services Act.⁵

¹ See, Welfare and Institutions Code section 4785.

² The Individuals with Disabilities Education Act is codified at title 20, United States Code section 1400 et seq.

³ Government Code section 95000 et seq. Implementing regulations are found at title 17, California Code of Regulations, section 52000 et seq.

⁴ Government Code section 95014, subdivision (b).

⁵ Government Code sections 95004, subdivision (a), and 95014, subdivision (b).

2. Effective July 2011, regional centers are required to assess qualifying families an annual family program fee. (Welf. & Inst. Code, §§ 4783, 4785.) Welfare and Institutions Code section 4785 provides that parents of a child under age 18, who is eligible for services under the Act, lives in the parent's home, receives services purchased by the service agency, and is not eligible for Medi-Cal, will be assessed an annual participation fee. The amount of the annual fee is determined by a schedule which is created by DDS. (Welf. & Inst. Code, § 4783.) The family's income and size determine the amount of the annual fee assessed.

3. Petitioner asserts that the assessment of the fee is unconstitutional and not in keeping with the spirit of the Individuals with Disabilities Education Act. Article III, Section 3.5 of the California Constitution prohibits an administrative agency from declaring a statute unenforceable, or refusing to enforce a statute, on the basis that it is unconstitutional unless an appellate court has made a determination that the statute is unconstitutional. Therefore, this issue may not be resolved in this proceeding.

4. Petitioner meets the annual fee program criteria identified in Welfare and Institutions Code section 4785. However, based upon NBRC's review of the family's income documentation at hearing and in accordance with the fee schedule developed by DDS, no annual fee will be assessed. (Factual Findings 1 through 5.)

ORDER

Based upon the financial documentation presented at hearing, North Bay Regional Center shall not assess petitioner's family an annual family program fee pursuant Welfare and Institutions Code section 4785. In all other respects the appeal is denied.

DATED: _____

JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings